IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 18.12.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice S.TAMILVANAN

Writ Appeal No.2105 of 2002
& WAMP No.3565 of 2002

Mohamed Hassan ... Appellant(Petitioner in WP No. 22256/02)

Vs.

1.The State of Tamil Nadu,
rep., by its Secretary,
Highways Department,
Fort St. George,
Chennai-600 009.

2.The Divisional Engineer,
Highways Department,
Saidapet, Chennai-15.

3.The Assistant Divisional Engineer,
Highways Department,
Saidapet, Chennai-600 015. .. Respondents/Respondents

Writ appeal filed under Clause 15 of the Letters Patent against the order dated 24.06.2002 made in W.P.No.22256 of 2002.

(WP filed under Article 226 of the Constitution of India to issue Writ of Mandamus forbearing the Respondents 1 to 3 from in any manner disturbing the peaceful possession and enjoyment of the property bearing Survey No. 240/2 of an extent 750 sq.ft in Kottivakkam Village, Tambaram Taluk, Kancheepuram dt. without due process of Law as guaranteed under Article 300 A of the Constitution of India)

For Appellant : No appearance

For respondent : Mr.Edwin Prabhakaran,
Govt. Advocate

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

JUDGMENT

(Judgment of the Court was delivered by P.SATHASIVAM, J.)

The above writ appeal is directed against the order dated 24.06.2002 made in W.P.No.22256 of 2002, in and by which, the learned single Judge, after satisfying himself and finding no merit, has dismissed the writ petition.

2. We have verified the relief prayed for in the writ petition as well as various grounds raised in the memorandum of grounds of appeal. The petitioner has filed the above writ petition to issue a writ of Mandamus forbearing respondents 1 to 3 from in any manner disturbing petitioner's peaceful possession and enjoyment of the property bearing survey No.240/2 of an extent of 750 sq.ft., in Kottivakkam village, Tambaram Taluk, Kancheepuram District, without due process of law as guaranteed under Article 300-A of Constitution of India.

3. The learned single Judge, on a perusal of the materials placed before him, has arrived at a conclusion that the petitioner was not having any legal right over the property and his attempt to get patta transferred in his name has also been turned down by the Tahsildar since the property has not been registered in his name as per Board Standing Order 31(7).

4. In the grounds of appeal, the petitioner has stated that his wife has got the property under a HIBA from her friend, which does not need registration under the Mohammeden law and his wife has transferred the title in favour of the petitioner under a registered deed of settlement. It is further stated that all the documents were produced to establish the title. But, the learned single Judge has dismissed the writ petition solely relying on the order of the Tahsildar. It is also stated that the petitioner is in lawful possession and enjoyment of the property and as such, the respondents are not entitled to interfere with his right or possession of the property otherwise than by process of law. It is also his claim that when there is no rival claim and the possession is not disputed, the learned single Judge ought to have found that the respondents are not entitled to forceful dispossession of the petitioner from the property.

5. We have already referred to the relief sought for in the writ petition. The petitioner prayed only for issuance of Writ of Mandamus forbearing the respondents from disturbing his possession and enjoyment, which shows that the respondents have not issued notice or notices either under the Land Encroachment Act or any other statute. The petitioner/appellants wants a decree to show that he is in possession and the same should not be disturbed. As rightly observed by the learned single Judge, the issue relating to possession

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

and enjoyment etc., cannot be gone into in the writ jurisdiction exercising power under Article 226 of the Constitution of India. If the petitioner/appellant is still aggrieved, he is free to work out his remedy before the appropriate Forum.

6. With the above observation, the writ appeal is dismissed. No costs. Consequently, WAMP No.3565 of 2002 is also dismissed.

raa

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

To

1.The Secretary,
State of Tamil Nadu,
Highways Department,
Fort St. George,
Chennai-600 009.

2.The Divisional Engineer,
Highways Department,
Saidapet, Chennai-15.

3.The Assistant Divisional Engineer,
Highways Department,
Saidapet, Chennai-600 015.

ONE CC TO THE GOVT. PLEADER (SR NO 63441)

W.A.No.2105 of 2002

18.12.2006

JRG(CO)

BP/2.12

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/